

BRAND, LOWELL & RYAN

A PROFESSIONAL CORPORATION

923 FIFTEENTH STREET, N.W.

WASHINGTON, D.C. 20005

RECEIVED
AUG 15 1996

AUG 15 3 25 PM '96

TELEPHONE: (202) 662-9700

TELECOPIER: (202) 737-7565

August 15, 1996

BY HAND DELIVERY

N. Bradley Litchfield, Esquire
Associate General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Supplement to
AOR 1996-25

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
AUG 15 3 25 PM '96

**Re: *Advisory Opinion Request 1996-25; Brand, Lowell & Ryan's
Response to Your August 2, 1996, Request for Additional
Information***

Dear Mr. Litchfield:

As you know, we represent the Seafarers Political Activity Donation ("SPAD"), the separate segregated fund of the Seafarers International Union ("SIU"). We have requested the above-captioned advisory opinion on SPAD's behalf.

We respectfully submit the following information in response to your letter of August 2, 1996, setting forth additional questions to which the Commission has sought answers before issuing an advisory opinion. We would ask that this letter and its attachment be included in the record upon which the Commission responds to our advisory opinion request.

The Commission's first question, as articulated in your August 2 letter, asks how many times a year and under what conditions an SIU member may apply for vacation pay. A member may only apply for vacation pay once he or she has accrued 120 days of employment with a vacation plan signatory company. Theoretically, were a member eligible for vacation pay in January of one year for days worked mostly in the prior year, he or she could receive up to three separate vacation pay checks in that second year, provided the member was thereafter able to obtain sufficient employment to accrue two more 120 day work periods in that year.

Second, you ask whether SPAD requests a general authorization from a member to deduct vacation pay or seeks a separate authorization each time he or she applies for vacation pay. The answers to both questions are essentially in the

BRAND, LOWELL & RYAN

N. Bradley Litchfield, Esquire
August 15, 1996
Page 2

affirmative. The Seafarers Vacation Application for rotary crewed employees (which is attached hereto as Exhibit 1) contains a general authorization to deduct vacation pay for SPAD. The authorization states that it is effective until revoked; accordingly, a separate SPAD authorization is not required each time a member applies for vacation pay. However, this general authorization appears on the Seafarers Vacation Application, which a member must complete each time he or she applies for vacation pay. In practice, many members either re-sign the SPAD authorization each time they apply for vacation pay or else periodically adjust their contributions using the authorization form.

At the August 1, 1996, Commission hearing on our advisory opinion request, Commissioner Thomas proposed that an acceptable solution to the difficult question we have presented might be for SPAD to ask its contributors to identify the company for whom they are currently working (if any company) at the time they request vacation pay. Our advisory opinion request and its supplements have explained that, in the vast majority of instances, the contributor will be "on the beach," between employers, when the vacation pay request is submitted. Commissioner Thomas stated at the hearing that his proposed solution could be workable if SPAD sought a new contribution deduction authorization each time the member applied for vacation pay.

We agree with the premise underlying Commissioner Thomas's hypothetical resolution. The FECA and its implementing regulations require identification of an individual's employer at the time the contribution is made. Although, as explained below, it would be logistically difficult to coordinate provision and reporting of this information, the Vacation Plan could include the following request for information on its Seafarers Vacation Application and provide the responses to the question to SPAD:

Are you currently sailing or assigned to a vessel on the date of this application? CHECK ONE:

___ No, I am "on the beach."

___ Yes, I am currently working for _____.

The results of this question would then be reported on SPAD's FEC disclosure reports.

BRAND, LOWELL & RYAN

N. Bradley Litchfield, Esquire
August 15, 1996
Page 3

We must emphasize that SPAD's collecting and providing this information will represent no mean logistical feat.¹ The computer program supporting the vacation plan, which processes some 500-600 applications per month, was custom written and last updated nearly fifteen years ago. The vacation plan's data base is not programmed to accept the information we propose to seek. Moreover, due to its age, the computer language in which the program was written is now obsolete. The technical support necessary to re-program the vacation pay computer system so that its database can accept the current employer information that we are proposing to obtain and then electronically sort and transmit that information to SPAD (which is operated on a separate and separately maintained database) is no longer available. Any such employer information will thus have to be manually culled from the hard copies of the 500-600 vacation pay applications processed each month, transmitted to SPAD, and then matched with the list of contributors who have exceeded the \$200 reporting threshold for that period. This process cannot be done electronically, short of a costly (estimates exceed one hundred thousand dollars) up-grade to the vacation plan's computer system. Finally, we would note that even this approach could not identify which of a contributor's previous employers caused his or her contributions to exceed \$200 in that year. Taken as a whole, the Commission should determine that SPAD's proposal set out in this letter should represent its "best efforts" to collect employer information.²

¹ We offer this solution as a means to assist in resolving this difficult advisory opinion request. This offer should not be seen to represent any sort of admission in any subsequent proceeding that may eventuate if this matter cannot be resolved.

² We continue to take issue with the General Counsel's contention that SPAD must undertake additional efforts on top of complying with the Commission's best efforts regulation. Commission regulations cited by the General Counsel state that "best efforts" are undertaken if, inter alia, "[t]he treasurer reports all contributor information not provided by the contributor, but in the political committee's possession, including information in contributor records, fundraising records and previously filed reports" 11 C.F.R. § 104.7(b)(3) (emphasis added). Nowhere does this regulation require a separate combing of a connected organization's records.

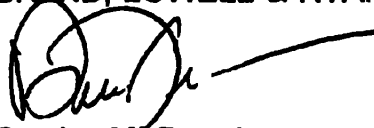
BRAND, LOWELL & RYAN

N. Bradley Litchfield, Esquire
August 15, 1996
Page 4

We hope this letter fully responds to the Commission's questions and observations.

Respectfully submitted,

BRAND, LOWELL & RYAN, P.C.

A handwritten signature in black ink, appearing to be "Stanley M. Brand", with a long horizontal line extending to the right.

Stanley M. Brand
David E. Frulla

Attachment



SEAFARERS VACATION APPLICATION



PLEASE PRINT

Date of application ____/____/____
(month) (day) (year)

Port of application _____

Social Security No.

--	--	--	--	--	--	--	--	--	--

Name _____

(last)

(first)

(middle)

Permanent Address
For Mail _____

(street)

Home Phone (____) _____

(area)

(phone)

(city, state, zip)

Book Number _____

Marital Status _____

Number of tax exemptions claimed _____

N.Y. State resident

☐

Yes

☐

No

ELIGIBILITY—At least _____ days accumulated seetime/boattime before making application. All dates of discharge, pay vouchers or check stubs must be less than one year old. Attach a photostatic copy of all discharges, pay vouchers or check stubs.

DO NOT WRITE IN GRAY AREA

Vessel/ Company		Rating		
Employed From	To			
Vessel/ Company		Rating		
Employed From	To			
Vessel/ Company		Rating		
Employed From	To			
Vessel/ Company		Rating		
Employed From	To			
Vessel/ Company		Rating		
Employed From	To			

Verified by: _____
(union representative)

Your Vacation Benefits are very important to you. The SIU wants you to get your benefits as soon as possible after you have filled out your application. So please take care to fill out the application *clearly and completely*.

BENEFICIARY SECTION

LIST SPOUSE AND DEPENDENTS' NAMES	RELATIONSHIP TO MEMBER	DATE OF BIRTH
1. _____ <small>(last, first, middle)</small>	_____	____/____/____
2. _____	_____	____/____/____
3. _____	_____	____/____/____
4. _____	_____	____/____/____

Name of beneficiary _____ Relationship _____

Address of beneficiary _____

UNRELATED BENEFICIARIES ARE NOT ENTITLED TO MAXIMUM DEATH BENEFITS.

☐ Check here if your beneficiary has changed.

I revoke all previous beneficiary nominations and make the foregoing nomination with respect to all benefits provided now or at any time in the future under the Seafarers' Welfare Plan, still reserving to myself the privilege of other and further changes.

MEMBER'S SIGNATURE _____ DATE SIGNED _____

WITNESS' SIGNATURE _____
(other than beneficiary)

WITNESS' ADDRESS _____
(street, city, state) ZIP CODE _____

Working Dues Authorizations	Seafarers Vacation Plan
<p>I hereby assign to the Seafarers International Union of North America, Atlantic, Gulf, Lakes & Inland Waters District from vacation payments due or which may become due me by reason of my employment aboard vessels owned or operated by employers and who make contributions to this Plan by reason of my employment a sum equal to the amount of my regular working dues for each day worked in accordance with Article V, Section 1(b) of its Constitution to the Seafarers International Union of North America, Atlantic, Gulf, Lakes & Inland Waters District and in accordance with invoices submitted to you by such Union and to remit the same monthly to each Union.</p> <p>This agreement, assignment, authorization and direction shall become operative on the day hereof and shall not be revocable for a period of more than one year or beyond the termination date of the collective bargaining agreement covering my employment, whichever occurs sooner, and to be renewed for successive periods of one year or the termination date of the collective bargaining agreement, whichever is earlier, unless and until upon or before the 30th day prior to any such anniversary date I give you and the Union notice in writing by registered or certified mail, to discontinue this assignment.</p> <p>I agree to hold you harmless for any payments you may make to the Union pursuant to this agreement, upon the invoices submitted to you by the Union.</p> <p>Member's Signature _____ Date ____/____/____</p>	
<p style="text-align: center;">SPAD Authorization Seafarers Vacation Plan</p> <p>I hereby assign, direct and authorize you to deduct from payments required to be made by you to me for vacation benefits and at the time of such payments, a sum equal to fifty cents per day for which I am entitled to vacation benefit payments and to pay and transfer such amounts to SPAD, 5201 Auth Way, Camp Springs, MD 20746.</p> <p>In addition to the above \$.50 daily contribution and understanding the critical need for legislative and political activities to help preserve the U.S.-flag merchant fleet, I also would like to contribute an extra daily amount as indicated below:</p> <p>Please place a check mark next to the desired amount: <input type="checkbox"/> \$.50 <input type="checkbox"/> \$1.00 <input type="checkbox"/> \$1.50 <input type="checkbox"/> \$2.00 or</p> <p>Write in your own amount of a voluntary additional daily contribution: \$_____</p> <p>This authorization shall remain in full force and effect unless written notice by certified mail is given by me to you of revocation of this authorization, in which event the revocation shall be effective as of the date you receive it and applicable only to vacation benefits both earned and payable to me thereafter.</p> <p>I acknowledge advice and understand that SPAD is a separate segregated fund established and administered by my union to engage in political activities and to make contributions and expenditures for candidates seeking political office and solicits and accepts only voluntary contributions, and I have the right to refuse to make any contributions, including this authorization, without fear of reprisal. I may contribute directly to SPAD such amounts as I may voluntarily determine in lieu of signing this authorization and that the specified amount herein provided is to minimize administrative responsibilities and costs consistent with the facilitation for the making of voluntary contributions. And this authorization for contributions constitutes my voluntary act. A copy of SPAD's report is filed with the Federal Election Commission and is available for purchase from the Federal Election Commission, Washington, D.C.</p> <p>Member's Signature _____ Date ____/____/____</p>	